

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant : Torque Traction )  
Technologies )  
Serial No.: 78/215083 )  
Filed: February 14, 2003 )  
Mark: SPR )  
Examining Attorney: )  
John T. Lincoski )  
Law Office No.: 113 )  
)

**TTAB**

**APPEAL BRIEF  
OF APPLICANT**

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11-08-2004

## **INTRODUCTION**

This is an appeal from the March 22, 2004 final refusal to register applicant's "SPR" mark for "driveshafts and driveshaft assemblies for land vehicles, associated hardware for use on land vehicles and parts thereof, namely shafts, yokes, universal joints, bearings, end fittings, journal crosses, and driveshaft center bearings."

## **ISSUE**

The sole issue on appeal is the likelihood of confusion with U.S. Registration No. 2083145.

## **EXAMINER'S REJECTION**

The Examiner has refused to allow the application because "the mark for which registration is sought so resembles the mark shown in U.S. Registration No. 2083145 as to be likely, when used on the identified goods/services, to cause confusion, or to cause mistake or to deceive".

## ARGUMENT

The marks and goods in question are not only different, but they have co-existed for at least fourteen years during which time no known confusion has occurred.

### *The Marks are Different*

Applicant's mark is in plain block letters while the registered mark includes a distinctive type style and a distinctive design consisting of three open and interlocking circles which are suggestive of piston rings, the Registrant's goods.

The Examining Attorney stated plainly, in his final refusal, that "[t]he Registrant's mark consists of two elements, a non-distinctive design and the typed mark SPR. Thus, the dominant element of the registered mark is identical to the applicant's".

First, Applicant disagrees that the three interlocking rings (similar to the five ring Olympic symbol and the four ring Audi logo) are non-distinctive. Second, the Examiner then segregated the letters SPR from Registrant's mark for comparison. This is improper.

In Jet, Inc. v. Sewage Aeration Systems, 165 F.3d 419 (1999), the Sixth Circuit Appellate Court “remind[ed] courts not to focus only on the prominent features of the mark, or only on those features that are prominent for purposes of litigation, but on the mark in its entirety.” The Examining Attorney clearly has not viewed the Registrant’s mark in its entirety when comparing it with Applicant’s.

**The Goods are Different**

Trademark registration 2083145 covers piston rings. This application covers driveshafts and driveshaft components. Piston rings are engine parts whereas Applicant’s goods are driveline parts.

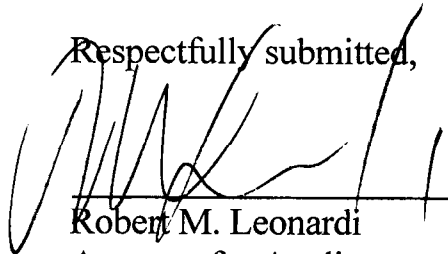
**The Marks have Co-Existed for Fourteen Years**

Applicant’s mark has been in use since June 6, 1989. The cited mark has been used in commerce since July 1, 1992. The marks have co-existed for at least fourteen years, during which time there has been no known confusion in the market place.

**SUMMARY**

Applicant’s mark has co-existed for over fourteen years with the

Registrant's mark, with no record of any confusion. This together with the differences in the marks and the goods is conclusive evidence that the marks are not confusingly similar. The Examining Attorney's refusal to register should be reversed.

Respectfully submitted,  
  
Robert M. Leonardi  
Attorney for Applicant  
Reg. No. 27,815

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on November 4, 2004.

  
(Signature) Valerie Ridner

Date of Signature: 11-04-04